

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JENNIFER PARKER, a single person,

Plaintiff,

v.

BARCLAYS BANK DELAWARE, a
Delaware chartered bank,

Defendant.

NO: CV-10-5096-RMP

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

Before the Court is the Defendant's Motion to Dismiss, ECF No. 38. The Court has reviewed the pleadings and the file and is fully informed.

BACKGROUND

In its motion, the Defendant, Barclays Bank Delaware ("Barclays"), seeks dismissal arguing that it is a creditor that is not subject to the Fair Debt Collection Practices Act ("FDCPA"), the Washington Collection Agency Act ("WCAA"), or the Washington Consumer Protection Act ("WCPA"). This motion echoes Barclays' earlier motion to dismiss, ECF No. 19.

1 In its first motion, Barclays' argued that the Plaintiff's complaint failed to
2 state a claim because the sparse factual allegations failed to allege that Barclays
3 was a debt collector. ECF No. 21 at 2. In response, the Plaintiff, Jennifer Parker,
4 sought to amend her complaint to correct the defect. ECF No. 23. Barclays'
5 opposed the amendment arguing that such amendment would be futile because the
6 proposed amended complaint failed to state a claim. ECF No. 29. The Court
7 granted Barclays' Motion to Dismiss and dismissed the Ms. Parker's original
8 complaint, concluding that Ms. Parker had failed to allege that Barclays was a debt
9 collector as required to state a claim under the Fair Debt Collection Practices Act
10 ("FDCPA"). ECF No. 34. However, the Court granted Ms. Parker leave to file her
11 amended complaint. ECF No. 34. In so holding, the Court found that Ms. Parker's
12 amended complaint stated a cause under the FDCPA because:

13 Taken in the light most favorable to the Plaintiff, the allegation
14 [contained in the proposed amended complaint] that Barclays was
15 collecting on behalf of Juniper Bank . . . gives rise to no inference that
16 Barclays and Juniper are related entities. It is therefore a natural
17 conclusion that Barclays is collecting on behalf of a separate entity,
18 Juniper.

19 ECF No. 34 at 9. By collecting on behalf of a separate entity, Barclays was acting
20 as a debt collector. The Defendant responded by pointing to a credit card
agreement that the Defendant asserted was the same agreement signed by Ms.
Parker. ECF No. 30 at 2. The agreement identified Barclays and Juniper as one
and the same. ECF No. 30 at 5-17. However, as the motion was brought under

1 Rule 12(b)(6), the Court could not consider the agreement without converting the
2 motion into one for summary judgment. Fed. R. Civ. P. 12(d). The Court noted
3 that “[w]hile the credit card agreement, if taken as true, would preclude this Court
4 from finding that Barclays was collecting a debt on behalf of another, the Court
5 may not consider the credit card agreement at this time.” ECF No. 34 at 9. As a
6 result, the Court granted leave to file the proposed amended complaint. Ms. Parker
7 filed her Second Amended Complaint six days later. ECF No. 35.

8 After Ms. Parker filed her Second Amended Complaint, Barclays again
9 moved for dismissal, ECF No. 36. The present motion to dismiss raises the same
10 arguments addressed in the Court’s prior order. However, in support of the present
11 motion, Barclays has filed a declaration requesting the Court to take judicial notice
12 of a May 25, 2006, filing with the Delaware Secretary of State by Juniper Bank
13 formally changing its name to Barclays Bank Delaware. ECF No. 39. Barclays
14 argues that because the Court can take judicial notice of the document, the Court
15 may consider the document in ruling on a Rule 12(b)(6) motion. Ms. Parker has
16 not responded to the instant motion.

17 **APPLICABLE LAW**

18 A claim for relief must contain “a short and plain statement of the claim
19 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Rule
20 12(b)(6), a court may dismiss a complaint on motion by the defendant where the

1 complaint “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ.
2 P. 12(b)(6). In reviewing the sufficiency of a complaint, a court accepts all well-
3 pleaded allegations as true and construes those allegations in the light most
4 favorable to the non-moving party. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d
5 992, 998 (9th Cir. 2010) (citing *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519
6 F.3d 1025, 1031-32 (9th Cir. 2008)).

7 “To survive a motion to dismiss, a complaint must contain sufficient factual
8 matter, accepted as true, to ‘state a claim of relief that is plausible on its face.’”
9 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v.*
10 *Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the
11 plaintiff pleads factual content that allows the court to draw the reasonable
12 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing
13 *Twombly*, 550 U.S. at 556). However, “[r]ule 8(a) ‘does not impose a probability
14 requirement at the pleading state; it simply calls for enough fact to raise a
15 reasonable expectation that discovery will reveal evidence’ to support the
16 allegations.” *Starr v. Baca*, 633 F.3d 1191, 1205 (9th Cir. 2011) (quoting
17 *Twombly*, 550 U.S. at 556).

18 On a motion for dismissal under Rule 12(b)(6), “[r]eview is limited to the
19 complaint.” *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)
20 (quoting *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993)). The

1 only exceptions to this rule are that: (1) a court may consider material attached to
2 the complaint or material of uncontested authenticity that is necessarily relied on
3 by the complaint; and (2) the court may consider information that may be judicially
4 noticed. *Id.* at 688-89.

5 “A judicially noticed fact must be one not subject to reasonable dispute in
6 that it is . . . (2) capable of accurate and ready determination by resort to sources
7 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Where a
8 party requests that a court take judicial notice and supplies the court with the
9 necessary information, the court shall take judicial notice. Fed. R. Evid. 201(d).

10 **DISCUSSION**

11 **Judicial Notice**

12 The Court takes judicial notice of the fact that Juniper Bank and Barclays
13 Bank Delaware are the same company based on the information contained in the
14 May 25, 2006, Certificate of Amendment of Articles of Association of Juniper
15 Bank filed with the Delaware Secretary of State. The Court concludes that the
16 certificate is a “source[] whose accuracy cannot reasonably be questioned.” Fed.
17 R. Evid. 201(b). For the purpose of judicial notice, the Court finds the certificate is
18 the type of source that this circuit considers appropriate for judicial notice. *See*
19 *e.g., Grassmueck v. Barnett*, 281 F. Supp. 2d 1227, 1232 (W.D. Wash. 2003) (“As
20 certified public records kept by the Secretaries of State in Washington and

1 Delaware, the Articles fall directly into the category of items that the Ninth Circuit
2 generally considers proper for judicial notice.”).

3 **Fair Debt Collection Practices Act Claims**

4 In her Second Amended Complaint, Ms. Parker makes two claims under the
5 FDCPA: (1) that Barclays called at an unusual time in violation of 15 U.S.C. §
6 1692c(a)(1), and (2) that Barclays called repeatedly in violation of 15 U.S.C. §
7 1692d(5). As this Court noted in its prior order to dismiss, sections 1692c(a)(1)
8 and 1692d(5) do not apply to creditors collecting their own debts in their own
9 name. *See* §§ 1692a(5), 1692c, 1692d.

10 This Court has already held that Ms. Parker’s amended complaint fails to
11 state a claim on a theory that Barclays used a different name in collecting its debt.
12 ECF No. 34 at 8. In light of the fact that the Court has now taken judicial notice of
13 Barclays and Juniper being one and the same, the Court concludes that Ms. Parker
14 has failed to state a claim under the FDCPA because the complaint fails to allege
15 that Barclays was acting as a debt collector.

16 **State Law Claims**

17 Ms. Parker claims that Barclays violated RCW 19.16.250(13),¹ and by
18 extension RCW 19.86.020,² by repeatedly calling Ms. Parker in an attempt to

19 ¹The second amended complaint, ECF No. 34, cites to RCW 19.16.250(12).

20 However, RCW 19.16.250(12) prohibits a debt collector from contacting a debtor

1 collect a debt and by calling outside of the allowed timeframe of 7:30 a.m. to 9:00
2 p.m. ECF No. 35 at 4.

3 RCW 19.16.250 provides that:

4 No licensee or employee of a licensee shall:

5 * * *

6 (13) Communicate with a debtor or anyone else in such a manner as to
7 harass, intimidate, threaten, or embarrass a debtor, including but not
8 limited to communication at an unreasonable hour, with unreasonable
9 frequency, by threats of force or violence, by threats of criminal
10 prosecution, and by use of offensive language. A communication shall
11 be presumed to have been made for the purposes of harassment if:

12 (a) It is made with a debtor or spouse in any form, manner, or
13 place, more than three times in a single week, unless the
14 licensee is responding to a communication from the debtor or
15 spouse;

16 (b) It is made with a debtor at his or her place of employment
17 more than one time in a single week, unless the licensee is
18 responding to a communication from the debtor;

19 (c) It is made with the debtor or spouse at his or her place of
20 residence between the hours of 9:00 p.m. and 7:30 a.m. A call
to a telephone is presumed to be received in the local time zone

directly after the debt collector has been notified in writing by an attorney for the
debtor that all communications regarding a claim should be addressed to the attorney. The
appropriate section addressing harassment is RCW 19.16.250(13).

²A violation of RCW 19.16.250 is a per se violation of RCW 19.86.020.
RCW 19.16.440.

1 to which the area code of the number called is assigned for
2 landline numbers, unless the licensee reasonably believes the
3 telephone is located in a different time zone. If the area code is
4 not assigned to landlines in any specific geographic area, such
5 as with toll-free telephone numbers, a call to a telephone is
6 presumed to be received in the local time zone of the debtor's
7 last known place of residence, unless the licensee reasonably
8 believes the telephone is located in a different time zone.

9 A licensee is defined as “any person licensed under this chapter.” RCW
10 19.16.100(9). Chapter 19.16 RCW’s licensing requirement applies to “collection
11 agenc[ies]” or “out-of-state collection agenc[ies]” RCW 19.16.110. Accordingly,
12 the restrictions contained in RCW 19.16.250(13) apply to collection agencies.

13 A “collection agency” means and includes:

14 (a) Any person directly or indirectly engaged in soliciting claims for
15 collection, or collecting or attempting to collect claims owed or due or
16 asserted to be owed or due another person;

17 (b) Any person who directly or indirectly furnishes or attempts to
18 furnish, sells, or offers to sell forms represented to be a collection
19 system or scheme intended or calculated to be used to collect claims
20 even though the forms direct the debtor to make payment to the
creditor and even though the forms may be or are actually used by the
creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her
own claim uses a fictitious name or any name other than his or her
own which would indicate to the debtor that a third person is
collecting or attempting to collect such claim.

RCW 19.16.100(2).

Accordingly, RCW 19.16.250(13), like the FDCPA, applies only to
parties collecting debts on behalf of third-party creditors or parties collecting

1 their own debts while using a fictitious name. The complaint does not allege
2 that Barclays used a fictitious name when attempting to collect from Ms.
3 Parker, and, in light of the Court's taking judicial notice that Barclays and
4 Juniper are one and the same, the Complaint fails to allege that Barclays was
5 collecting a debt on behalf of a third-party. *See* ECF No. 35. Therefore, the
6 complaint fails to state a claim under RCW 19.16.250(13).

7 **Leave to Amend the Complaint**

8 "Dismissal without leave to amend is improper unless it is clear . . .
9 that the complaint could not be saved by any amendment." *Manzarek v. St.*
10 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (2008) (internal
11 quotations omitted). The present complaint is the third complaint and
12 second amended complaint in this action. The instant complaint was filed in
13 response to Barclays' previous motion to dismiss. The gravamen of
14 Barclays' previous motion to dismiss was that Ms. Parker had failed to
15 allege that Barclays was a debt collector. This Court granted leave to amend
16 the complaint to remedy the earlier complaint's failure to allege sufficient
17 facts to establish that Barclay's was a debt collector. This instant motion to
18 dismiss is based on the second amended complaint's continued failure to
19 allege that Barclays is a debt collector. In light of the Court's having taken
20 judicial notice of Barclays' May 25, 2006, Certificate of Amendment of

1 Articles of Association of Juniper Bank filed with the Delaware Secretary of
2 State supporting that Barclays and Juniper Bank are one and the same, the
3 Court finds that further amendments could not cure the instant deficiency.
4 As a result, the case is dismissed with prejudice and without leave to amend.

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. The Defendant's Motion to Dismiss, **ECF No. 36**, is **GRANTED**.
7 2. The above-captioned action is **DISMISSED WITH PREJUDICE** and
8 without costs to either party.
9 3. **JUDGMENT** shall be entered for the Defendant.

10 **IT IS SO ORDERED.**

11 The District Court Executive is hereby directed to enter this Order, to
12 provide copies to counsel, and to **CLOSE** this file.

13 **DATED** this 9th of January 2012.

14
15 *s/ Rosanna Malouf Peterson*
16 ROSANNA MALOUF PETERSON
17 Chief United States District Court Judge
18
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20